

Message Text

CONFIDENTIAL

PAGE 01 LISBON 00810 01 OF 03 281921Z
ACTION EUR-12

INFO OCT-01 ISO-00 EURE-00 BIB-01 SS-15 NSC-05 SSO-00
NSCE-00 INR-07 INRE-00 PA-01 PRS-01 USIE-00 L-03 SP-02
EB-08 H-01 /057 W
-----282015Z 093000 /42 S
O 281848Z JAN 77
FM AMEMBASSY LISBON
TO SECSTATE WASHDC IMMEDIATE 9988

C O N F I D E N T I A L SECTION 1 OF 3 LISBON 0810

E.O. 11652: XGDS
TAGS: PINT, US, PO
SUBJ: BIB/RFE: ANALYSIS OF JAN. 27 JOINT CONTRACT

REF: (A) LISBON 0765, (B) 76 LISBON 8929

SUMMARY: JOINT RARET CONTRACT DRAFT COMPLETED JAN 27
ACCOMMODATES PRINCIPAL USG DESIDERATA. IT PROVIDES FOR
DESIRED NEW ORGANIZATIONAL RELATIONSHIPS, INCLUDING SPECIFIC
RECOGNITION OF USG ROLE, CITATION OF RADIO LIBERTY AS
CONTRACT PARTICIPANT AGENCY, AND RARET USE OF "THIRD
PARTY"EQUIPMENT. IT PERMITS EXPANSION AND ESTABLISHES
A LONG-TERM CONTRACT UNDER WHICH THIS ACTIVITY MAY BE
APPROPRIATELY HANDLED, WHILE ALSO OPENING THE WAY FOR
DUTY-FREE ENTRY OF TRANSMITTERS AND RELATED EQUIPMENT.
THE CONTRACT SETS A FAIR COMPENSATION OF U.S. \$3 MILLION
TOTAL FOR THE 15-YEAR CONTRACT TERM, AND A LUMP SUM PAY-
MENT OF U.S. \$400,000 FOR THE 1973-77 INTERIM PERIOD.
PORTUGUESE STATE RADIO IS CONCEDED BROADCAST TIME IN A
WAY THAT WILL NOT INTERFERE WITH RFE/RL
ACTIVITIES. THE PRINCIPLE THAT RARET SHALL PAY
NO RENT OR TAXES ON PROPERTY IS RESPECTED. EMBASSY
BELIEVES THIS CONTRACT DRAFT IS BALANCED AND FAIR, AND
RECOMMENDS THAT IT BE SIGNED AS IS AT EARLY DATE.
ONLY CAVEAT IS THAT JAN. 27 CONTRACT DELETES SO MANY
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PAGE 02 LISBON 00810 01 OF 03 281921Z

UNDESIRABLE FEATURES OF FIGUEIREDO STUDY GROUP'S
DRAFT THAT OPPOSITION TO NEW JOINT DRAFT
COULD STILL ARISE WITHIN GOP. WE ARE BRIEFING CONCERNED
MINISTRIES. END SUMMARY.

1. BACKGROUND: THE JOINTLY DRAFTED CONTRACT -- TEXT IN
REFTEL (A) -- LARGELY AMOUNTS TO A REWRITE OF THE

FIGUEIREDO STUDY GROUP'S DEC. 22 DRAFT, MAINTAINING SOME OF ITS ORGANIZATION AND LANGUAGE, BUT REINSTATING THE PRINCIPAL POINTS OF THE MAY 5 RARET DRAFT. IN OPINION OF RARET LAWYER THIS CONTRACT IS MORE TIGHTLY WRITTEN AND MORE SPECIFICALLY BENEFICIAL TO RARET AND USG THAN EITHER THE 1951 OR THE 1963 RARET CONTRACTS. EMBASSY SHARES THIS VIEW. WE BELIEVE JAN. 27 CONTRACT MEETS ALL MAIN BIB/RFE REQUIREMENTS.

2. NEW ORGANIZATIONAL ASPECTS: CONTRACT CONTAINS SEVERAL NEW ARRANGEMENTS WHICH WERE AMONG KEY USG NEGOTIATING GOALS:

(A) GOVERNMENT-TO-GOVERNMENT: SOARES LOURO (AND THE FONMIN, ACCORDING TO EMBASSY SOUNDINGS) HAVE NO PROBLEM WITH SPECIFIC INVOLVEMENT OF THE USG AND GOP WITHIN TERMS OF THIS CONTRACT; IN FACT, THEY WANT THIS. LANGUAGE MAKING USG A PARTICIPANT WAS WRITTEN INTO ART. 19, USING LANGUAGE DEPT. PROVIDED THE EMBASSY. AFTER SIGNATURE, WE WOULD EXPECT THAT CONTRACT WILL BE COVERED BY AN EXCHANGE OF NOTES, IN WHICH THE TWO GOVERNMENTS RECOGNIZE AND GIVE THEIR STAMP OF APPROVAL TO THE RARET CONTRACT -- THUS FURTHER CEMENTING THE GOVERNMENT-TO-GOVERNMENT RELATIONSHIP.

(B) RADIO LIBERTY: PROVIDING FOR THE POSSIBILITY OF RADIO LIBERTY USAGE OF THE TRANSMITTERS WAS AN OBJECTIVE FROM THE OUTSET. THERE WAS NO OPPOSITION TO THIS EFFORT, SO RL IS APPROPRIATELY MENTIONED IN ART. 1.

(C) THIRD PARTIES AND SUCCESSOR ORGANIZATIONS: GOP NEGOTIATORS NEVER HAD ANY SERIOUS PROBLEMS WITH A CONFIDENTIAL

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PAGE 03 LISBON 00810 01 OF 03 281921Z

CONTRACT DISPOSITION PERMITTING RARET USE OF TRANSMITTING EQUIPMENT OWNED BY THIRD PARTIES. BUT THE FIGUEIREDO GROUP HAD SOUGHT TO REQUIRE NEGOTIATION OF A NEW CONTRACT EACH TIME RARET WANTED TO INCREASE THE NUMBER OF TRANSMITTERS. THAT REQUIREMENT IS OMITTED FROM THE JAN. 27 DRAFT. HENCE, ART. 3, PARA. 3 FULLY MEETS US NEEDS. ON QUESTION OF RFE/RL SUCCESSOR ORGANIZATIONS, WE BELIEVE ART. 1 LANGUAGE SUFFICES; RARET LAWYER SAID OUR ORIGINAL ADDITIONAL PHRASE, "OR AN ASSOCIATE" DILUTED THE FORCE OF THE OVERALL CLAUSE IN PORTUGUESE AND ALSO THAT THE "ASSOCIATE" AND "ENTERPRISE WHICH MAY SUCCEED IT" WERE ESSENTIALLY SYNONYMOUS IN PORTUGUESE LAW. THE GOP ALSO FEARED THAT, THEORETICALLY AT LEAST, SOMEONE COULD BUY A MINORITY OF RARET SHARES AS AN "ASSOCIATE" AND DEMAND TRANSMITTER TIME.

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PAGE 01 LISBON 00810 02 OF 03 281930Z
ACTION EUR-12

INFO OCT-01 ISO-00 EURE-00 BIB-01 SS-15 NSC-05 SSO-00
NSCE-00 INR-07 INRE-00 PA-01 PRS-01 USIE-00 L-03 SP-02
EB-08 H-01 /057 W

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C O N F I D E N T I A L SECTION 2 OF 3 LISBON 0810

3. CONTRACT DURATION: WE WANTED THE GUARANTEE OF A LONG-TERM CONTRACT, TO JUSTIFY POSSIBLE MODERNIZATION OF TRANSMITTER FACILITIES. WE BELIEVE THAT ART. 13, WHICH ESTABLISHES A 15-YEAR CONTRACT PERIOD, MEETS BIB REQUIREMENTS. THIS PERIOD EXCEEDS BOTH PREVIOUS RARET CONTRACTS WHICH WERE FOR TEN YEARS.

4. EXPANSION PERMISSION: THE FIGUEIREDO STUDY GROUP'S DRAFT WOULD HAVE SEVERELY LIMITED MODERNIZATION PROCEDURES. THESE RESTRICTIVE MEASURES WERE NEGOTIATED OUT OF THE JAN 27 DRAFT. THIS DRAFT RESTORES THE ART. 1 REFERENCE PERMITTING "EXPANDING" OF RARET FACILITIES, WHICH FIGUEIREDO HAD OMITTED. IN ART. 2, PARA 2 (B), WE DELETED A PHRASE WHICH THE STUDY GROUP HAD DRAFTED TO REQUIRE PRIOR GOP AUTHORIZATION FOR ANY NEW TRANSMITTER INSTALLATIONS. ART. 3 REWRITES FIGUEIREDO'S ART. 4 AND ALSO REMOVES A FIGUEIREDO REQUIREMENT THAT NEW CONTRACTS WOULD HAVE TO BE NEGOTIATED FOR INCREASES IN THE NUMBER OR POWER OF EXISTING TRANSMITTERS. THE NEW APPROACH IN ART. 3 SIMPLY SUBMITS NEW INSTALLATIONS TO PRIOR TECHNICAL APPROVAL BY THE GOP REGULATORY AGENCY. ART. 2, PARA 3 ESTABLISHES THE PRINCIPLE THAT RARET MAY LEASE OR OTHERWISE ACQUIRE EQUIPMENT FROM "THIRD PARTIES," WHICH ARE ASSURED THAT "IN ALL CIRCUMSTANCES" SUCH EQUIPMENT

CONFIDENTIAL

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PAGE 02 LISBON 00810 02 OF 03 281930Z

SHALL REMAIN "THE PROPERTY OF WHOEVER OWNS IT."

5. TERMINATION CLAUSE: THE FIGUEIREDO VERSION SOUGHT

TO PERMIT TERMINATION AFTER SEVEN YEARS WITH THREE MONTHS ADVANCE NOTICE. JANUARY 27 DRAFT IN ART. 12, PARA 2 PROVIDES A TERMINATION CLAUSE WHICH MAKES THE CONTRACT UNTOUCHABLE FOR TEN YEARS, AND AFTER THAT REQUIRES AN EIGHTEEN-MONTH NOTICE--AN ARRANGEMENT WE BELIEVE WILL MEET BIB REQUIREMENTS.

6. IMPORT/EXPORT: THIS OBJECTIVE WAS THE MOST DIFFICULT TO NEGOTIATE, FOR TWO REASONS: (A) DUTY-FREE ENTRY HAS BEEN GRANTED ON BLANKET BASIS TO ONLY ONE STATE ENTERPRISE (THE NATIONALIZED TELEVISION NETWORK) AND THUS THERE IS A VERY LIMITED PRECEDENT; (B) THE NEW NATIONAL ASSEMBLY IS VERY JEALOUS OF ITS RIGHT TO LEGISLATE ON ALL TAXATION MATTERS, AND ANY STRAIGHTFORWARD DUTY-FREE ISSUE WOULD HAVE TO BE APPROVED BY THAT BODY. JOINT DRAFT ART. 23 AMOUNTS TO AN AGREED-UPON EUPHEMISM IN WHICH THE INTENT IS THAT ANY TRANSMITTERS WE MIGHT WANT TO IMPORT WOULD ENTER COUNTRY DUTY-FREE ON THE SAME BASIS AS DO ALL EQUIPMENT, HOUSEHOLD GOODS AND OTHER MATERIALS DESTINED FOR USE BY THE AMERICAN EMBASSY AND ITS DIPLOMATIC PERSONNEL.

7. COMPENSATION: SOARES LOURO ACCEPTED U.S. OFFER OF U.S. \$3 MILLION FOR 15-YEAR PERIOD (\$200,000 ANNUALLY) AND SPECIAL COMPENSATION IN LUMP SUM OF \$400,000 FOR TRANSITION PERIOD (SEE ARTICLES 17 AND 21). FACT THAT THIS IS SIGNIFICANTLY LESS THAN FIGUEIREDO'S DEMAND OF \$13,400,000 COULD RAISE SOME GOP EYEBROWS, HOWEVER, AND TAKE US BACK TO NEGOTIATING TABLE. A MAJOR REASON SOARES LOURO ACCEPTED USG OFFER DOUBTLESS WAS THE "SWEETENER" LINKING POSSIBLE INCREASES IN INSTALLED TRANSMISSION POWER AUTOMATICALLY AND CONFIDENTIAL

CONFIDENTIAL

PAGE 03 LISBON 00810 02 OF 03 281930Z

PROPORTIONATELY WITH ANNUAL INSTALLMENTS (ART 17, PARAS 2 AND 3).

8. STATE RADIO TRANSMITTER TIME: THE GOP WAS PLEASED BY THE PROVISION IN ART 10, PARA 7, FOR 28 HOURS OF BROADCASTING TIME PER WEEK, BY STATE RADIO (RDP) TO EMIGRANT COMMUNITIES IN WESTERN EUROPE. ADDITIONALLY, JAN 27 DRAFT PROTECTS RFE/RL TRANSMISSION NEEDS BY SPECIFYING--FOR FIRST TIME--THAT RDP TRANSMISSIONS WILL USE "THE EXTANT ANTENNA SYSTEM." JAN 27 DRAFT ALSO RETAINS MAY 5 RARET LANGUAGE TO EFFECT THAT TIMING OF RDP BROADCASTS WILL "NOT INTERFERE WITH RARET'S REGULAR BROADCAST SCHEDULE."

9. REVERSION: A CAREFUL REREADING OF THE PREVIOUS

CONTRACTS SHOWED THAT THE 1951 CONTRACT SPECIFIED THAT LANDS AND BUILDINGS WOULD REMAIN RARET PROPERTY. THEN, IN CONTRAST, THE 1963 CONTRACT STATED IN ART 15 THAT AT THE END OF THE CONTRACT PERIOD "ALL INSTALLATIONS, INCLUDING SPARE PARTS, AND ALL PROPERTY OF PERMANENT UTILIZATION INCLUDED IN THE PRESENT CONCESSION WILL REVERT TO THE CTT WITHOUT ANY COST FOR THE LATTER..." THE SAME ARTICLE THEN SPECIFICALLY EXCLUDED RARET'S FOUR 250-KW TRANSMITTERS FROM THAT AUTOMATIC PROPERTY TRANSFER. BY FAILING ALSO SPECIFICALLY TO EXCLUDE LANDS AND BUILDINGS, THE CONTRACT THUS INCLUDED THEM IN PROPERTY TO BE TURNED OVER TO THE GOP. WE ACKNOWLEDGED THIS REALITY (IN ART 2, PARA 1(C), BUT INCLUDED A NEW FEATURE (ART 22, SOLE PARA.) IN WHICH IT IS RECOGNIZED THAT RARET SHALL NEVER PAY RENT OR TAXES ON THE LAND AND BUILDINGS IT USES.

CONFIDENTIAL

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PAGE 01 LISBON 00810 03 OF 03 281933Z
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NSCE-00 INR-07 INRE-00 PA-01 PRS-01 USIE-00 L-03 SP-02
EB-08 H-01 /057 W
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C O N F I D E N T I A L SECTION 3 OF 3 LISBON 0810

(10) OTHER SALIENT POINTS:

(A) ADDITIONAL GUARANTEES: ARTICLE 11 INCLUDES OUR NEW PHRASE "AND RESPECTING CONSTITUTIONAL PRINCIPLES" WHICH IS ONE ADDITIONAL GUARANTEE THAT GOP WOULD NOT SUSPEND RARET OPERATIONS UNLESS THERE WERE BONA FIDE NATIONAL EMERGENCY.

(B) RESTRICTED USE OF FOREIGN PERSONNEL IN ARTICLE 10: SAME REQUIREMENT WAS SPECIFIED IN ART. 11, PARA. 6 OF 1963 CONTRACT, AND POSES NO DIFFICULTIES FOR RARET OR US.

11. NEXT STEPS:

(A) SOARES LOURO TOLD US HE INTENDED TO CIRCULATE COPIES OF THE JOINT DRAFT TO INTERESTED MINISTRIES

(FONOFF, FINANCE, TRANSPORT AND COMMUNICATIONS) AND THE PRIME MINISTER'S OFFICE ON JAN. 27. HE ALSO TOLD US HE HOPED TO BE ABLE TO SIGN CONTRACT IN ABOUT TWO WEEKS.

(B) DCM BRIEFED FONMIN DIRGEN FOR BILATERAL AFFAIRS JAN. 26, SAYING U.S. WAS SATISFIED WITH THE JOINT DRAFT, SUGGESTING IT BE REVIEWED IN CONTEXT OF OVER-ALL BILATERAL RELATIONS. DCM SAID U.S. WANTS SOME KIND OF STAMP OF APPROVAL ON CONTRACT FROM BOTH GOVERNMENTS AND SUGGESTED EXCHANGE OF NOTES (PER L/EUR); DIRGEN SAID HE THOUGHT IT A GOOD IDEA. IN THIS WAY, THE
CONFIDENTIAL

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PAGE 02 LISBON 00810 03 OF 03 281933Z

CONTRACT WOULD PROBABLY BE SIGNED FOR PORTUGUESE SIDE BY REPRESENTATIVES OF THE CTT AND THE SECRETARIAT FOR MASS COMMUNICATIONS AND FOR THE U.S. SIDE BY A REPRESENTATIVE OF RARET. THE NOTES WOULD BE EXCHANGED BETWEEN THE FONMIN AND THE EMBASSY.

(C) EMBOFF BRIEFED FIN MIN'S LEGAL ADVISER ON CONTRACT JAN. 27.

12. QUESTION: UNDER ABOVE OUTLINED CONTRACT-SIGNING AND NOTE-EXCHANGING PROCESSES, WILL EMBASSY OR RARET REQUIRE CIRCULAR 175 AUTHORITY? WE PRESUME NOT, BUT PLEASE PROVIDE IF REQUIRED.

13. CONCLUSION: EMBASSY BELIEVES THE JAN. 27 JOINT CONTRACT IS A GOOD AGREEMENT -- FAIR, BALANCED, AND MEETING LONG-TERM U.S. NEEDS. IT ANSWERS OUR MAJOR DESIDERATA. WE ASSUME IT ALSO MEETS THE GOP'S REQUIREMENTS AND THAT SOARES LOURO PROBABLY WILL BE ABLE TO OBTAIN APPROVAL AND PROCEED TO SIGNING. HOWEVER, THE JOINT DRAFT ELIMINATED SO MANY OF THE FIGUEIREDO GROUP'S POINTS THAT OBJECTIONS MAY BE VOICED FROM SOME GOP QUARTERS. IN THAT EVENT, WE MAY HAVE TO GO BACK TO THE NEGOTIATING TABLE.
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Message Attributes

Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: NEGOTIATIONS, CONTRACTS, RADIO STATIONS
Control Number: n/a
Copy: SINGLE
Sent Date: 28-Jan-1977 12:00:00 am
Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1977LISBON00810
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: DG ALTERED PER 77 LISBON 1101
Executive Order: X4
Errors: N/A
Expiration:
Film Number: D770031-0988
Format: TEL
From: LISBON
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1977/newtext/t1977019/aaaaahkf.tel
Line Count: 319
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 96f2e4dd-c288-dd11-92da-001cc4696bcc
Office: ACTION EUR
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 6
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: 77 LISBON 765, 76 LISBON 8929
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 23-Nov-2004 12:00:00 am
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 3678348
Secure: OPEN
Status: NATIVE
Subject: BIB/RFE: ANALYSIS OF JAN. 27 JOINT CONTRACT
TAGS: PINT, US, PO
To: STATE
Type: TE
vdkgvwkey: odhc://SAS/SAS.dbo.SAS_Docs/96f2e4dd-c288-dd11-92da-001cc4696bcc
Review Markings:
Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009